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Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Guidelines of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to visits to States parties under article 11 (a) of the Optional Protocol*

At its twenty-third session, the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment decided that a revised text of the guidelines for the Subcommittee's regular and follow-up visits would be considered for adoption at the twenty-fourth session and made available in the working languages of the Subcommittee. The revised text, set out below, was adopted by the Subcommittee at its twenty-fourth session.

I. Procedure concerning visits conducted under article 11 (a) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to visits to States parties

Guideline 1
Visits conducted under article 11 (a)

1. In accordance with the mandate conferred on the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Subcommittee shall establish a programme of visits to places of deprivation of liberty in States parties in order to prevent torture and other cruel, inhuman or degrading treatment or punishment and to strengthen the protection of persons deprived of their liberty against torture and other forms of ill-treatment. If the Subcommittee considers it appropriate, it may decide to carry out a short follow-up visit, as provided for in article 13, paragraph 4, of the Optional Protocol.

* The present revised guidelines supersede those issued under the symbol CAT/OP/12/4.

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Guideline 2
Establishment of the programme of visits

2. In accordance with article 13 of the Optional Protocol, the Subcommittee shall establish a programme of visit activities, which may be subject to modification. The programme shall be determined by the Subcommittee in plenary on the advice of its regional teams.

3. In drawing up the programme, the Subcommittee shall have regard to the provisions of articles 1, 11 (para. 1 (c)) and 31 of the Optional Protocol.

4. The programme will be made public at the conclusion of the Subcommittee session at which it is adopted.

5. The Subcommittee may inform the State party concerned of the Subcommittee's intention to undertake a visit to it, in order to enable it to make the necessary practical arrangements for the visit to be carried out effectively, including the designation of one or more focal points, the issuance of credentials and the provision of any additional information requested in accordance with article 12 (b) of the Optional Protocol.

6. The dates of each visit will be made public one week following the notification of such dates to the State party.

Guideline 3
Visiting delegations

7. Visits shall be conducted by at least two members of the Subcommittee, none of whom shall have the nationality of the country to be visited or shall have been nominated for election by the country to be visited or shall have any other known connection with the country to be visited that may give rise to a potential conflict of interest.

8. The members of the Subcommittee with responsibility for carrying out a visit shall act in the name of the Subcommittee. The head of the delegation shall be determined by the Bureau, in consultation with the delegation.

9. The programme for each country visit shall be developed by the delegation in conjunction with the secretariat and the Bureau.

10. The Subcommittee may decide that a delegation conducting a visit shall be assisted by one or more experts as provided for in article 13, when that is desirable. The Subcommittee shall select from the roster established in accordance with article 13, paragraph 3, any expert(s) who is (are) to accompany its delegation on a visit. A delegation shall not be assisted by an expert who is a national of the State party to be visited or has any other known connection with the country to be visited that may give rise to a potential conflict of interest.

11. The Subcommittee may decide that a delegation conducting a visit shall be assisted by interpreters.

12. At least one member of the secretariat of the Subcommittee shall participate in each visit.

Guideline 4
Preparation of visits

13. The secretariat shall prepare the visit in collaboration with the visiting delegation. This may include the preparation of a country brief drawn from a broad range of relevant sources, tailored to the specific needs of the visit.

Guideline 5
Conduct of visits

14. When conducting a visit, members of the delegation act on behalf of the Subcommittee and not in their individual capacity.

15. Members of the delegation may arrive in a country in advance of the official commencement of the visit in order to undertake preparatory work, if authorized by the delegation to do so.

16. The visiting delegation works as a team under the leadership of the head of delegation or the head of a subgroup, if established.

17. The delegation shall, when possible, hold meetings on a daily basis for briefing and debriefing.

18. The visit programme may be varied by the delegation during the course of the visit.

19. If the conduct of a member of the delegation raises issues of concern, the head of delegation may, having consulted, as appropriate, within the delegation, take such measures as appear appropriate under the circumstances and which may include, following consultation with the Bureau, requesting that the member leave the delegation.

20. If the members of the delegation consider that the conduct of the head of delegation raises issues of concern, they shall refer this to the Bureau.

21. When conducting confidential interviews the delegation shall respect the privacy and autonomy of the interviewee.

22. Only when photographic documentation is regarded as essential for the preparation of the visit report may images be recorded of and in places of detention, and only with the express consent of the head or subhead of the delegation. In addition, images of persons may be recorded only with the express consent of the person concerned.

23. At the end of a visit to a place of detention the visiting delegation may provide the relevant authority with preliminary oral feedback on that visit. Should it choose to do so, such feedback should highlight generic and systemic issues and only refer to an identifiable individual or individuals in exceptional cases of pressing need and with their consent.

24. At the end of a visit, the delegation may communicate preliminary observations to the authorities of the State party concerned. The preliminary observations may also be communicated to the national preventive mechanism(s), and the delegation may consider suggesting to the State party that it invite the national preventive mechanism(s) to the presentation of the preliminary observations or to other relevant meetings.

25. At the end of the visit, the delegation may, inter alia:

(a) Raise any urgent issues that in its view require immediate action;

(b) Seek to explore potential preventive measures in dialogue with the State party and other stakeholders, without prejudice to the recommendations to be made in the visit report;

(c) Seek to establish an agreed framework for securing an effective post-visit continuous dialogue.

26. The delegation may, with the consent of the person(s) concerned and taking into account the risk of possible reprisals, raise individual cases with the State party, so that the State might intervene to protect the person(s) concerned.

27. If a delegation encounters difficulties when exercising its mandate, the focal point of the State party shall be contacted forthwith to solve the problem. If the intervention of the focal point does not solve the problem, the delegation shall contact a relevant minister. Where the problem is considered to jeopardize the mission, the delegation may suspend the programme until a solution is found or, in consultation with the Bureau, consider ending the country visit.

28. The Subcommittee may adopt more detailed rules of procedure relating to the conduct of visits.

II. Post-visit procedure

Guideline 6
Reports on visits

29. After each visit, Subcommittee members of the delegation shall prepare a note summarizing their principle observations, which shall be circulated among all members of the delegation, in order to facilitate the drafting of the report. The draft report shall be prepared with the support of the secretariat. Once approved by the head of delegation, the draft report shall be circulated among the Subcommittee members participating in the visit and revised in the light of their comments. Once agreed upon by those members, the draft report shall be circulated to all members of the Subcommittee for consideration and adoption.

30. The adopted visit report shall be transmitted confidentially to the State party concerned under a letter of transmittal from the Chairperson on behalf of the Subcommittee. The State party shall be requested to inform the Subcommittee within a specified period of its response to the recommendations the Subcommittee has made, including action to be taken in the implementation of the recommendations. The Subcommittee may also, if relevant, confidentially communicate its recommendations and observations or its report to the national preventive mechanism(s).

31. The visit report shall reflect the views of the Subcommittee, drawing on the information and observations derived within the framework of its visit.

32. The Subcommittee's delegation shall take into account any comments and information that the State party concerned might submit to it before, during and after a visit. It may at its own initiative request additional information from the State party, the national preventive mechanism(s) and any other relevant bodies to which the Subcommittee may choose to address itself.

Guideline 7
Continuing dialogue

33. Following the transmittal of the Subcommittee's report, the Subcommittee and the State party concerned shall continue dialogue with respect to the content of the report and on the implementation of any recommendations, in accordance with article 12 (d) of the

Optional Protocol and paragraph 25 (c) of the present guidelines. Such dialogue may also be held with the national preventive mechanism(s) of the country concerned.

34. The nature and approach of the dialogue arising from each visit will be determined on a case-by-case basis. This will usually involve the submission by the visited State of a written response to be received within an agreed time frame. It will also include a range of other means of direct contact, as agreed by the Subcommittee, with the State party and with the national preventive mechanism(s) and other stakeholders where appropriate.

35. The Subcommittee may seek to undertake a short ad hoc visit in order to continue the dialogue on prevention of torture and ill-treatment with authorities and to verify the state of implementation of some key recommendations.

Guideline 8
Publication of the report

36. The Subcommittee shall publish its report, together with any comments of the State party, whenever requested to do so by that State party. The Subcommittee may publish the report in whole or in part if the State party makes part of the report public, in accordance with article 16, paragraph 2, of the Optional Protocol, or if the State party makes a public statement summarizing the report or commenting upon its content.

Guideline 9
Responses to non-cooperation

37. If the State party refuses to cooperate with the Subcommittee according to articles 12 and 14 of the Optional Protocol, or to take steps to improve the situation in the light of the Subcommittee's recommendations, the Subcommittee may choose to use all available measures to address such a lack of cooperation. Those measures may include making a public statement on the matter or publishing the report of the Subcommittee, in accordance with article 16, paragraph 4, of the Optional Protocol. Before a decision to take such measures is made, the State party concerned shall be given an opportunity to make its views known. When such measures are taken, no personal data shall be published without the express consent of the person concerned.

III. Confidentiality

Guideline 10
Confidentiality

38. The visit report produced by the Subcommittee and any other documentation relating to its dialogue with the State party shall remain confidential unless authorization is given by the State party concerned for that documentation to be made public in accordance with the provisions of the Optional Protocol. Such material may be shared in confidence with the national preventive mechanism(s) of the country visited, in accordance with article 16, paragraph 1, of the Optional Protocol.

39. No personal data shall be published without the express consent of the person concerned. Such consent can be given in writing or in any other certified form.

40. Members of the Subcommittee, experts and other persons accompanying the Subcommittee are required, during and after their terms of office, to respect the principle of confidentiality that attaches to the work of the Subcommittee.

IV. Reprisals

Guideline 11
Reprisals

41. Prior to any visit, the Subcommittee shall appoint a member of the Subcommittee delegation as the focal point for reprisals, who will identify any areas of concern that should be raised by the Subcommittee with the State party.

42. If, during a visit, the Subcommittee becomes aware that reprisals may occur, or have occurred, it shall take appropriate action. Such action might include: changing the visiting methodology; communicating with the Government of the State party or with officials responsible for the facilities in question so that the State may intervene to protect the person(s) concerned; returning to monitor the situation, or asking local national preventive mechanisms or specialized non-governmental organizations to conduct visits; requesting the intervention of other United Nations bodies; speaking to the local or international media; suspending or terminating the visit; and raising concerns through appropriate diplomatic channels.